IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9497 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

SAIYED AHAMADALI ABBASALI

Appearance:

1. Special Civil Application No. 9497 of 1992

MR HARDIK C RAWAL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner. The respondent has been served with the notice of rule but has not appeared before this Court either in person or through any advocate. By way of this

petition, the petitioner has challenged the award made by the labour court in Reference No. 348 of 1990 dated 30th April, 1992 wherein the labour court has , while setting aside the order of dismissal dated 6/2/1988, ordered reinstatement of the respondent workman with a direction to the first party corporation to pay an amount of Rs.3000.00 to the respondent workman towards the costs of the reference with other consequential benefits and benefit of continuity of service. This petition was admitted by this court by order dated 25.12.1992 and interim relief in terms of para 11(B) of the petition has also been granted.

Learned advocate Mr. Raval for the petitioner has submitted that before the labour court, the legality, validity and propriety of the departmental inquiry has not been challenged by the workman concerned. He has further submitted that even the claim for back wages has also not been pressed by the workman concerned; that no oral evidence was led by either of the parties before the labour court. He has further submitted that the charge levelled against the respondent was to the effect that he recovered the fare of Rs.1.50 ps. from the passenger and not issued ticket which amounts to serious misconduct and in such a situation, the labour court ought not to have exercised the discretion vested in it in favour of the respondent workman. He has further submitted that the labour court has committed error in exercising the powers under sec.11A of the I.D. Act, 1947. He has also submitted that the award of cost made by the labour court is contrary to law.

I have considered the submissions made by the learned advocate Mr.Raval. I have also perused the award in question made by the labour court. Before the labour court, the workman has not challenged the legality and validity of the departmental inquiry vide purshis at Exh. 9 and the claim of back wages has not been pressed by the workman and no evidence has been led by either of the parties before the labour court. The charge levelled against the respondent workman was to the effect that he recovered the fare of Rs.1.50 from the passengers but has not issued tickets but the labour court has considered that these passengers were beggars and were not prepared to give the amount of fare and, therefore, there was some exchange of words between the passengers and the conductor and, therefore, he has not been able to issue tickets immediately after recovering the fare. It was also considered by the labour court that he was a new employee and his record was clean and, therefore, considering all these aspects of the matter, the labour

court has granted reinstatement without back wages for the intervening period in exercise of the powers vested in it under sec. 11A of the I.D. Act, 1947. Therefore, so far as this aspect of reinstatement without back wages for the intervening period is concerned, according to my opinion, the labour court has not committed any error in exercising the powers in favour of the workman concerned. Further, while admitting this petition, notice as to interim relief was issued by this Court and on 27th January, 1993, it was ordered by this court to reinsert the name of the respondent workman in the list of Babli workers at the place where he was on the date of dismissal and it was ordered to offer work to him as and when his turn comes in the waiting list of the badli workers. Therefore, in view of these interim directions issued by this court on 27.1.1993, name of the respondent must have been reinserted in the wait list of badli workers and by now his services must have been regularized in the regular establishment. Therefore also, after passage of this much period, now it would not be just and proper to disturb the present position of the respondent workman. Even otherwise, Mr. Raval has also not been able to submit that there is any infirmity in the award in question or that the labour court has committed any jurisdictional error and/or procedural irregularity in making the award of reinstatement without back wages with continuity of service. However, so far as the imposition of the cost of Rs.3,000.00 is concerned, according to my opinion, there was no any fault on the part of the petitioner corporation which would require imposition of the cost upon the petitioner. Therefore, that part of the award directing the petitioner to pay the costs of Rs.3000.00 to the respondent workman is required to be quashed and set aside without disturbing the award of reinstatement with continuity of service without back wages.

Accordingly this petition is partly allowed. The award made by the labour court concerned in Reference No. 348 of 1990 dated 30th April, 1992 is hereby modified to the effect that the award of cost of Rs.3000.00 made by the labour court against the petitioner corporation is hereby set aside. It is, however, clarified that this court has not disturbed the award of reinstatement with continuity of service without back wages for the intervening period. Rule is made absolute in terms indicated hereinabove with no order as to costs.

11.4.2002. (H.K. Rathod,J.)

Vyas